

REMARKS

Claim 1 is amended to incorporate and further define the subject matter of claim 11. Specifically, claim 11 recited that “the filter is adapted to retard the travel of red blood cells and white blood cells through it.” This limitation has been added to claim 1, with the terms “adapted to,” which the Office Action does not consider to be a positive limitation, being replaced with the structural feature that is responsible for performing the recited function of retarding the passage of red and white blood cells. Thus, claim 1 recites that “the filter has pores of sufficiently small size to retard the passage of red blood cells and white blood cells.”

A person of ordinary skill in the art would understand from the specification that it is the pore size that retards the passage of red and white blood cells. The specification states that the coating “may function to prevent red blood cells 12 and white blood cells 13 from . . . reaching the catalytic layer 15.” (§ [0017]). Further, the specification states that the meso-porous material can be created to contain holes, “thereby turning the material into a sieve, allowing particles and materials smaller than the holes to pass but retarding the passage of particles that are larger than the holes.” (§ [0022]). Thus, the amendment to claim 1 is fully supported by the specification and clarifies how the filter is “adapted to” perform the function that was previously recited in claim 11.

Claim 31 is amended to incorporate the subject matter of claim 34, as well as the subject matter of claim 11 in the same manner as explained above. Claims 11 and 34 are canceled by this amendment and claims 6, 8, 12, 14-20, 23, and 24 have previously been withdrawn from consideration. With entry of these amendments, claims 1-5, 7, 9, 10, 13, 21, 22, 25-33, and 35 are presented for examination.

REJECTIONS UNDER § 112

Claims 2 and 4 were rejected as being non-compliant with the definiteness requirement of § 112, second paragraph. Without conceding to the propriety of this rejection and in order to expedite prosecution of this application, claims 2 and 4 are amended to delete the term “material.” Claims 3, 6, and 8 are also amended to delete the term “material.” Applicants respectfully submit that claims 2 and 4 are compliant with the definiteness requirement of § 112, second paragraph. Accordingly, favorable consideration and withdrawal of the rejection are respectfully requested.

REJECTIONS UNDER § 102*Noda, Alt, and Davidson*

Claims 1-5, 9, 11, 27, and 30 were rejected under § 102(c) as being anticipated by *Noda et al.* (U.S. Patent No. 6,534,197). Claims 1-5, 9, 11, 13, 25, 26, and 30 were rejected under § 102(b) as being anticipated by *Alt* (U.S. Patent No. 6,217,607). Claims 1-5, 7, 9, 10, 13, 25, and 30 were rejected under § 102(b) as being anticipated by *Davidson* (U.S. Patent No. 5,690,670). Applicants respectfully request reconsideration of these rejections.

Independent claim 1 recites a filter that covers or contains a catalyst, “wherein the filter has pores of sufficiently small size to retard the passage of red blood cells and white blood cells.”

With respect to *Noda*, Applicants continue to maintain the previously argued position that none of the layers described in *Noda* function as a filter. Furthermore, for any structure in *Noda* that is purported by the Office Action to constitute a filter, such structure is not disclosed to have “pores of sufficiently small size to retard the passage of red blood cells and white blood cells.” In fact, as explained previously, *Noda* states that the metallic layer and the second coating layer are designed to allow for the ingrowth of bone tissue, indicating that these purported filter structures could not have the above-mentioned pore sizes.

With respect to *Alt*, Applicants continue to maintain the previously argued position that *Alt* does not disclose a filter covering the outermost iridium oxide layer of the stent. Furthermore, for any structure in *Alt* that is purported by the Office Action to constitute a filter, such structure is not disclosed to have “pores of sufficiently small size to retard the passage of red blood cells and white blood cells.”

With respect to *Davidson*, Applicants continue to maintain the previously argued position that *Davidson* contains no disclosure of a filter covering or containing a catalyst. Furthermore, for any structure in *Davidson* that is purported by the Office Action to constitute a filter, such structure is not disclosed to have “pores of sufficiently small size to retard the passage of red blood cells and white blood cells.”

For at least these reasons, Applicants respectfully submit that claim 1, and all claims that depend therefrom, are not anticipated by *Noda*, *Alt*, or *Davidson*. Accordingly, favorable consideration and withdrawal of the rejections are respectfully requested.

Kula

Claims 31-33 were rejected under § 102(b) as being anticipated by *Kula et al.* (U.S. Patent No. 6,325,825). Applicants respectfully request reconsideration of this rejection.

Independent claim 31 recites a medical implant, “wherein at least one of the struts is covered with a filter, the filter covering a catalyst, and wherein the filter has pores of sufficiently small size to retard the passage of red blood cells and white blood cells.” *Kula* discloses neither a filter nor a catalyst. For at least these reasons, Applicants respectfully submit that claims 31-33 are not anticipated by *Kula*. Accordingly, favorable consideration and withdrawal of the rejection are respectfully requested.

Also, for the purposes of noting in the record, Applicants respectfully disagree that the claims terms “transverse cross-section” in claim 31 should be construed to encompass a longitudinal cross-section, such as that of *Kula*.

REJECTIONS UNDER § 103

Alt and Smalley

Claims 21, 22, 28, and 29 were rejected under § 103(a) as being unpatentable over *Alt* in view of *Smalley et al.* (U.S. Patent Pub. No. 2002/0085968). Applicants respectfully request reconsideration of this rejection.

Applicants continue to maintain the previously argued position that there is no basis for combining *Alt* with *Smalley* in the manner suggested by the pending Office Action. In addition, Applicants further submit the following remarks.

Claims 21, 22, 28, and 29 depend from independent claim 1, which recites a filter that covers or contains a catalyst, “wherein the filter has pores of sufficiently small size to retard the passage of red blood cells and white blood cells.” Neither *Alt* nor *Smalley* disclose a filter having these features. Thus, even if *Alt* and *Smalley* could properly be combined in the manner suggested by the pending Office Action, the combination would still not include all the required elements of claim 1.

For at least these reasons, Applicants respectfully submit that claims 21, 22, 28, and 29 are not rendered obvious by *Alt* in view of *Smalley*. Accordingly, favorable consideration and withdrawal of the rejection are respectfully requested.

Kula and Alt

Claims 34 and 35 were rejected under § 103(a) as being unpatentable over *Kula* in view of *Alt*. Claim 34 is canceled. Applicants respectfully request reconsideration of the rejection of claim 35.

Applicants continue to maintain the previously argued position that there is no basis for combining *Kula* with *Alt* in the manner suggested by the pending Office Action. In addition, Applicants further submit the following remarks.

Claim 35 depends from independent claim 31, which recites a medical implant, “wherein at least one of the struts is covered with a filter, the filter covering a catalyst, and wherein the filter has pores of sufficiently small size to retard the passage of red blood cells and white blood cells.” As explained above, *Kula* does not disclose a filter, and therefore, does not disclose this feature of the claimed invention. Also as explained above, *Alt* does not disclose a filter having “pores of sufficiently small size to retard the passage of red blood cells and white blood cells.” Thus, even if *Kula* and *Alt* could properly be combined in the manner suggested by the pending Office Action, the combination would still not include all the required features of claim 35.

For at least these reasons, Applicants respectfully submit that claim 35 is not rendered obvious by *Kula* in view of *Alt*. Accordingly, favorable consideration and withdrawal of the rejection are respectfully requested.

CONCLUSION

Applicants respectfully submit that the present application is in condition for allowance. The Examiner is invited to contact Applicants' representative to discuss any issue that would expedite allowance of this application.

The Commissioner is authorized to charge all required fees, fees under § 1.17, or all required extension of time fees, or to credit any overpayment to Deposit Account No. 11-0600 (Kenyon & Kenyon LLP).

Respectfully submitted,

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